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October 6, 2011

**Via Email: *rule-comments@sec.gov***

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

**Re: File No. S7-36-11 Retrospective Review of Existing Regulations**

Dear Ms. Murphy:

Wells Fargo Advisors, LLC (“WFA”) responds to the Securities and Exchange Commission’s (“SEC” or “the Commission”) request for the public to submit comments to assist the Commission in considering the development of a plan for the retrospective review of its regulations. WFA fully supports this effort by the Commission and will respond below to some of the specific questions posed in the request for information. As an investor protection agency, we believe an overarching theme is that the SEC should place a priority on reviewing early and often those rules having a direct impact on the investor experience, such as those impacting the quantity and quality of information placed before investors.

WFA consists of brokerage operations that administer almost \$1 trillion in client assets. It accomplishes this task through 15,088 full-service financial advisors in 1,100 branch offices in all 50 states and 4,569 licensed financial specialists in 6,610 retail bank branches in 39 states.<sup>1</sup>

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<sup>1</sup> WFA is a non-bank affiliate of Wells Fargo & Company (“Wells Fargo”), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across North America and internationally. Wells Fargo has \$1.2 trillion in assets and more than 278,000 team members across 80+ businesses. Wells Fargo’s brokerage affiliates include First Clearing LLC which provides clearing services to 93 correspondent clients and WFA. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

## **Response to Questions**

### *1. What factors should the Commission consider in selecting and prioritizing rules for review?*

In determining which rules to select for review, the Commission should first start at the typical retail investor's doorstep. The ever increasing requirements for information that must be given to investors, in paper as a default, should provide the SEC with fertile ground to retrospectively analyze rules for their effectiveness and impact. Some recent rules will actually require delivery to certain investors of information approaching 850 pages to be received at one time. In addition, the cumulative volume of paper received by investors in certain products easily could number in the thousands of pages on an annual basis.

A second means of selecting rules for review should be the estimated costs of implementation. The SEC can rank rules based on the Commission's own projections of implementation costs, choosing the most costly ones for priority reviews. That a rule is projected to cost a lot is not in and of itself a reason to say the rule is unneeded or ineffective. Those projections, however, are strong evidence that there should be an early, and probably frequent, assessment of whether the rule is worth the extensive cost.

A third selection criterion should be to review rules that have similar requirements, such as reporting or disclosures, to determine prioritization and selection. A review of predetermined requirements would help to address technology gaps, duplication of reporting obligations, or antiquated practices. Such a review would provide the SEC with a holistic analysis of potential impacts to more than one rule.

### *2. How often should the Commission review existing rules?*

Similar to the answer above, the Commission should review annually or bi-annually rules having a direct and measurable impact on the retail investor experience. Depending on the frequency of such reviews, the depth and breadth could vary, with a lighter analysis for rules that are reviewed more frequently. As it relates to the cost ranking, the SEC could set a review period based on those projected costs of implementation. The staff should review rules exceeding a certain dollar threshold annually. Rules below that dollar amount would receive less frequent reviews. No rule should go longer than five years after passage without some version of a "look back" to see if the rule is performing as intended.

### *3. Should different rules be reviewed at different intervals? If so, which categories of rules should be reviewed more or less frequently, and on what basis?*

Rules having a direct impact on the retail investor need a more frequent review. The basis for that review will include an analysis of whether the rule is effective, i.e., are investors receiving more and retaining more information because of the rule. The SEC should ask investors if they find the material helpful and useful. In addition, the investor could advise based on their personal experience whether the rule has met its goal and whether there are any unintended consequences.

4. *To what extent does relevant data exist that the Commission should consider in selecting and prioritizing rules for review and in reviewing rules, and how should the Commission assess such data in these processes? To what extent should these processes include reviewing financial economic literature or conducting empirical studies? How can our review processes obtain and consider data and analyses that address the benefits of our rules in preventing fraud or other harms to our financial markets and in otherwise protecting investors?*

Operational complaint data can often provide some insight into how the investors are reacting and responding to SEC rule changes. Someone upset with the volume of paper they receive or the forms they must sign likely will not put pen to paper and write an SEC Commissioner. They could very well make such a complaint to their firm, and if properly classified, the complaint will become a part of the firm's operational database. Receiving anonymous (as to the client's identity) feeds of such data in a non-exam, non-enforcement context may help the Commission in determining rules worthy of a closer review and analysis. Better stated, the SEC should consider a collective review of operational complaints from large retail organizations for relevant information related to the execution of the rule and the impact to the public. We believe large retailers would provide relevant information across a large population of investors and have comparable rule execution. Importantly, at least at the first cut, this data would not indicate which items came from which firms so that it is clearer that the collected information is for rule assessment purposes only.

5. *What can the Commission do to modify, streamline, or expand its regulatory review processes?*

The Commission's review processes would benefit greatly from seeking input into its retrospective reviews from venues outside of New York and Washington. While costs are always a concern in the current environment, the SEC could leverage its existing regional office structure to host fact finding roundtables in locales around the country. Such regional fact finding events could take a number of forms, including industry only invites as well as investor only forums. The Commission should also feel free to engage in single firm events. Properly structured, there should be ample opportunity for SEC staff to get views from a single firm's financial advisors, technology analysts and operations personnel in a non-examination context. The SEC should also experiment with having a firm invite its clients to an informational session. These relatively low cost gatherings resulting from the SEC "riding the circuit" likely could turn into an invaluable resource for the Commission as it seeks to have a meaningful and effective regulatory review process.

6. *How should the Commission improve public outreach and increase public participation in the rulemaking process?*

In addition to the comments, above, the SEC can increase and improve outreach and participation by forming partnerships with a number of entities who have access to investors. The SEC should accompany certain prospective rulemaking with invites to arbitration clinics, college business programs, and other educational entities to engage directly in the rulemaking process. The SEC should offer to accept and post short video comments. A number of investors

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receive information from call-in radio or television shows, and the Commission should consider participating in those programs or creating and hosting its own “coast-to-coast” web based call-in show. The SEC should experiment with using social media to push out questions to the retail investor. Essentially, these would not be full comment letter inquiries, but short specific questions, e.g., “What disclosure documents do you find most helpful?” As these single question queries get answered, the SEC should make the raw data available to researchers, universities and others.

*7. Is there any other information that the Commission should consider in developing and implementing a preliminary plan for retrospective review of regulations?*

A key to having a successful plan for retrospective review of regulations almost certainly requires creation of a rule effectiveness grading or scoring system. While the SEC can certainly issue its own grades, the methodology should be transparent. Factors in the grading could include impact on retail investors, costs to industry, clarity of requirements, percentage of non-compliance and impact on other rules. Having the SEC grade its own work could aid it in recognizing where rules have been successful and where they have fallen short of the rule’s original intent.

## **Conclusion**

The SEC has a great opportunity to use this request for information to uncover means that will improve existing rules and make certain they actually accomplish the investor protection goals that originally animated most of the regulations. We look forward to working with the Commission in taking a closer look at some of the rules and rendering recommendations for changes where appropriate.

If you have any questions regarding this comment letter, please do not hesitate to contact us.

Sincerely,

Ronald C. Long

Director of Regulatory Affairs